

*Valerie Ayers,
SUNY Assistant Vice Chancellor for Employee Relations*

*James Jarvis,
Associate Counsel, SUNY Office of General Counsel*

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TWELVE STEP GUIDE TO INVESTIGATING A TITLE IX COMPLAINT AGAINST AN EMPLOYEE

STEP 1: RECEIVING AND ANALYZING A REPORT OF EMPLOYEE MISCONDUCT

Reports of employee misconduct come from many sources:

- Students
- Supervisors
- Co-workers
- Vendors, contractors or other visitors to the campus
- Anonymous tips

HR staff should be trained to recognize when a report of misconduct may have Title IX or Article 129-B implications

Review jurisdictional standards under Title IX

STEP 2:
WHO YA
GONNA CALL?



STEP 2: WHO YA GONNA CALL?



Title IX Coordinator:

- Report incident(s)
- Prior reports
- Resources for Reporting Individual
- Coordinate investigation

STEP 2: WHO YA GONNA CALL?



Supervisor:

- Prior reports
- Direct supervisor to NOT counsel Respondent
- Preserve evidence
- Maintain confidentiality

STEP 2: WHO YA GONNA CALL?



Employee Relations Office

- Advice and guidance
- Sample notices, letters, NODs, etc.
- Precedent
- Consistency

STEP 3: REVIEW THE PERSONNEL FILE



Appointment status

- Temporary/probationary
- Term
- Tenured/permanent appointment

Bargaining unit

Training record

Performance evaluations

Public Officer Oath/Affirmation

Counseling/disciplinary record

STEP 4: SELECT INVESTIGATOR(S)



The appropriate investigator should possess all the following:

- Trained in conducting investigations of sexual violence and the effects of trauma
- The ability to investigate objectively without bias
- Prior investigative experience
- Working knowledge of employee policies
- Able to maintain confidentiality

STEP 5: FIRST MEETING WITH REPORTING INDIVIDUAL



Coordinate with Title IX Coordinator

Avoid duplicate interviews

Confidential setting

Record conversation: audio recording v. notes

Explain investigation and disciplinary process

Discuss confidentiality concerns

Discuss retaliation concerns

Manage expectations – do not make promises you cannot keep

STEP 5: FIRST MEETING WITH REPORTING INDIVIDUAL



Try to elicit the following information from the Reporting Individual:

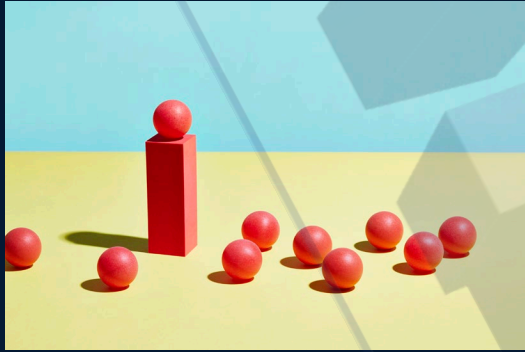
- Who committed the alleged conduct?
- What exactly occurred or was said?
- When did it occur and is it still ongoing?
- Where did it occur?
- How often did it occur?
- How did it affect you?
- How did you react?
- What response did you make when the incident(s) occurred or afterwards?
- Are there any persons who have relevant information?

STEP 5: FIRST MEETING WITH REPORTING INDIVIDUAL



- Was anyone present when the alleged conduct occurred?
- Did you tell anyone about it?
- Did anyone see you immediately after episodes of alleged conduct?
- Did the person who harassed you harass anyone else?
- Do you know whether anyone else complained about similar conduct by that person?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- How would you like to see the situation resolved?
- Do you know of any other relevant information?

STEP 6: SUPPORTIVE MEASURES



Based on interview with the reporting individual, consider supportive measures

- Alternate assignment at alternate location
- Suspension with pay (if institution permits)
- Coordinate alternate assignment with supervisor
- Assignment must include deliverables and due dates
- Laptop, cell phone and other equipment needed to complete assignment
- Progress reports
- Communications with staff and students
- Confidentiality

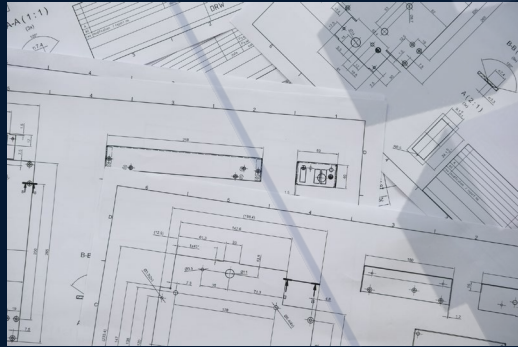
STEP 7: CREATE AN INVESTIGATION PLAN

Meet with the Title IX Coordinator and Investigator(s) to create an investigation plan

A complete plan should include:

- an outline of the issues
- the development of a witness list
- sources for information and evidence
- development of interview questions
- a process for retention of documentation and other evidence
- retainer of expert witnesses (computer forensic analyst, handwriting expert, etc.)

Be mindful of investigation deadlines within campus policies



STEP 8: DEVELOP INTERVIEW QUESTIONS



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- Questions should be developed ahead of time
- Additional questions can be added throughout the investigation as more evidence and information is shared
- Good questions are relevant and designed to draw out facts without leading the interviewee; they should be open-ended to elicit as much information as possible

STEP 9: TIME TO TAKE STOCK



Once you have interviewed the Reporting Individual (perhaps several times at this point) and other witnesses and have collected all the available physical and documentary evidence, it is time to pause and take stock of your case before you proceed with the Respondent's interview.

Schedule a meeting with the Title IX Coordinator, Respondent's Supervisor and the Investigator(s).

STEP 9: TIME TO TAKE STOCK



Questions to consider:

- What campus policies has the Respondent potentially violated?
- What laws has the Respondent potentially violated?
- Has the Respondent been previously counseled or disciplined for similar violations?
- Did the alleged violations occur within the “Statute of Limitations?”

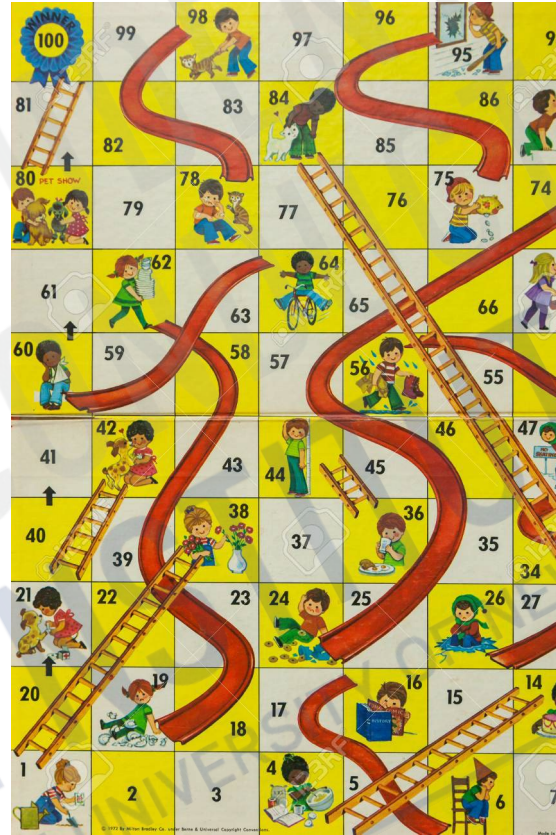
STEP 9: TIME TO TAKE STOCK



More questions to consider:

- What is the Respondent's appointment status? If temporary, short-term or nonunion, is the campus authorized to terminate the Respondent without conducting a disciplinary proceeding?
- If violations are not serious, would counseling be appropriate to resolve the matter?
- Would the Respondent's continued presence on the campus pose a risk of harm to the campus community or be unduly disruptive to campus operations? If so, suspension or temporary reassignment may be warranted.

FORK IN THE ROAD



STEP 10: CONDUCT EMPLOYEE INTERVIEW



STEP 10: CONDUCT EMPLOYEE INTERVIEW

A glowing red rectangular sign with the words "ON AIR" in white, bold, sans-serif capital letters. The sign has a slight 3D effect with a dark red shadow behind it.

Notice of Interview:

- Date
- Time
- Location
- Brief statement concerning the allegations
- Right to union representation or legal representation
- Failure to provide notice will essentially bar the use at arbitration of any information obtained from the employee during the interview

STEP 10: CONDUCT EMPLOYEE INTERVIEW

A glowing red rectangular sign with the words "ON AIR" in white, bold, sans-serif capital letters. The sign has a slight 3D effect with a dark red shadow behind it.

- Respondent should be told that any form of retaliation against someone who has filed a report, or is thought to have filed a report, is grounds for disciplinary action in and of itself.
- After completing the prepared questions, take a break and meet privately with the Title IX Coordinator; ask if he or she has any more questions. Return and ask the remaining questions.
 - NB: If new evidence is collected after the interview, the Respondent must be brought back in for another interview so that he/she has an opportunity to respond. If you have reason to believe additional investigation is warranted, adjourn the interview and inform Respondent he or she may be called back at a later date and that he or she is to continue with any alternate assignment.

STEP 10: CONDUCT EMPLOYEE INTERVIEW

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If investigation complete:

- close interview
- remind Respondent that the President or designee is considering suspension or temporary assignment, summarize allegations; allow him/her to make a statement in response to the allegations
- take another break and confirm the President's decision to suspend or place in temporary assignment and return
- advise Respondent that he will be suspended without pay/placed on TA unless he or she chooses to resign

STEP 11: NOTICE OF DISCIPLINE



Notice of Discipline:

- State proposed penalty
- Charges:
 - One charge per paragraph
 - Cite the policy or law that was violated
 - Date, time, location
- Instructions for filing Disciplinary Grievance
- Serve personally or by Certified Mail, Return Receipt Requested within time frame specified in Collective Bargaining Agreement

STEP 12: ARBITRATION



The arbitration is a full-blown due process hearing.

Management has the obligation to prove by documentary and testimonial evidence that the charges are true and that the proposed penalty is appropriate.

In suspension cases, management will also have the burden of demonstrating that such action was necessary.

Arbitrator confined to determination of guilt or innocence and the appropriateness of the proposed penalty.

STEP 12: ARBITRATION



In an immediate suspension case, the arbitrator will also render a decision on whether the immediate suspension was appropriate.

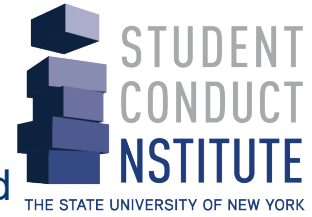
Standard of proof is preponderance of evidence.

Arbitrator's decision is final and binding.

NO PULITZER PRIZE



Carrie Bradshaw is a 20 year old undergraduate student at SUNY Hudson University. She is majoring in Journalism. During the Spring 2021 semester, Carrie applied for an internship at Cosmopolitan Magazine, for which she would receive school credit. On March 31, 2021, Carrie went to the office of Professor William Pulitzer, Chair of the Journalism Department. Carrie was enrolled in his JOU201 Intro to Magazine Writing class in the Fall 2020 semester, and she received an A. Given her grade in the class, and the fact that Dr. Pulitzer is Editor Emeritus of Newsday Magazine and a renowned expert in the field of Journalism, Carrie thought that his recommendation would help her chances at being accepted into the internship program.



NO PULITZER PRIZE



According to Carrie's statement that she gave to the Title IX Investigator, when she entered Dr. Pulitzer's office on March 31, he immediately commented on her appearance, stating something to the effect of "You are even prettier in person than on Zoom." She explained to him that she was seeking his recommendation for the internship, yet he continued to ask her personal questions about her dating life. Carrie further stated that all of a sudden, he kissed her, and before she knew it they were having sex on top of his desk.

NO PULITZER PRIZE

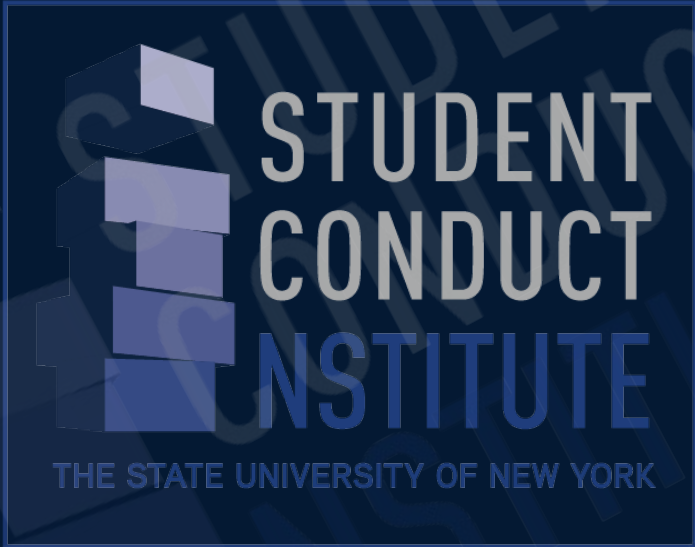


She opined that she didn't think this was the first time Dr. Pulitzer had sex in his office, because he was prepared with a supply of condoms that he had stored in an Altoids tin in his desk drawer. Carrie also noted that while they were having sex, she could see many pictures of his wife and children around the office, and it made her feel guilty. Two days after the encounter, Carrie received a copy of a glowing recommendation that Dr. Pulitzer submitted to Cosmopolitan magazine.

NO PULITZER PRIZE



Carrie further reports that since this incident occurred, she has suffered from feelings of shame and guilt, which have exacerbated her preexisting conditions of depression and anxiety. She was unable to attend classes for the remainder of the Spring semester and has received incompletes for all of them. Although Carrie was selected for the internship, she states she is currently unable to work due to her mental health problems. Carrie, after some hesitation, signed a formal Title IX complaint against Dr. Pulitzer because she wants him to “be fired” so she can return to campus in the Fall without fear of running into him. She is also fearful that given his national reputation, he could block her admission to graduate schools, and future employment.



The State University
of New York